

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EB-07 L-03 JUSE-00 SS-15 INR-07 /045 W

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FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC 1279

INFO AMCONSUL TORONTO

AMCONSUL WINNIPEG

C O N F I D E N T I A L OTTAWA 4016

E.O. 11652: GDS

TAGS: EINV, ETRD, CA

SUBJECT: POTASH ANTITRUST CASE: SURPRISE SUBPOENAS

EF: STATE 244660

1. EMBASSY CONTINUES TO HEAR EXPRESSIONS OF CONCERN THAT INDIVIDUALS NAMED AS UNINDICTED CO-CONSPIRATORS OR OTHERWISE CONNECTED IN SOME WAY WITH POTASH CASE MAY BE SERVED WITH SUBPOENAS IF THEY ENTER U.S. AND POSSIBLY RESTRAINED FROM RETURNING TO CANADA. AS AN EXAMPLE, QUESTION WAS RAISED BY SENIOR GOC OFFICIALS WITH DCM DURING COURSE OF EXECUTIVE SEMINAR ON OCTOBER 1.
 2. PARAGRAPH 4 OF REFTEL STATES THAT INTER ALIA JUSTICE WILL NOT INSTITUTE A BORDER WATCH OR SERVE SURPRISE SUBPOENAS WITHOUT PRIOR NOTIFICATION TO GOC. EMBASSY RECOMMENDS THAT WASHINGTON AGENCIES CONSIDER FEASIBILITY OF PROVIDING SOME FORM OF ASSURANCE TO CANADIANS THAT THEY NEED NOT BE INHIBITED IN PLANNING TRAVEL TO U.S. BY FEAR OF JUSTICE DEPARTMENT ACTION. THIS COULD BE DONE THROUGH STATEMENT TO PUBLIC AT LARGE OR BY MORE SELECTIVE NOTIFICATION (BY USG OR THROUGH GOC) TO INDIVIDUALS WHOSE NAMES HAVE BEEN PUBLICLY CONNECTED WITH CASE.
 3. EMBASSY RECOGNIZES THAT QUALIFYING PHRASE "WITHOUT PRIOR NOTIFICATION" LEAVES OPEN POSSIBILITY
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THAT SOME SUBPOENAS MIGHT BE SERVED AFTER NOTIFICATION

TO GOC. TO GIVE ASSURANCES AND THEN VIOLATE THEM
EVEN IN ONE OR A FEW CASES WOULD ONLY EXACERBATE PR
PROBLEM IN CANADA AND WOULD BE COUNTERPRODUCTIVE.
EMBASSY HOPES, HOWEVER, THAT BEARING THIS CONSIDERATION
IN MIND SUITABLE FORMULA CAN BE WORKED OUT TO REASSURE
THE MANY CONCERNED CANADIANS WHO HAVE PROFESSIONAL
OR PERSONAL REASONS FOR U.S. VISITS.
ENDEERS

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NNN

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